July 8, 2019

VIA EMAIL (regs.comments@federalreserve.gov)

Ms. Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20521
Docket No. R-1662
RIN 7100-AF 49

Re: Comments on Proposed Amendments to 12 C.F.R. Parts 225 and 238

Madam Secretary:

On behalf of our members, we, Georgia Bankers Association, Inc. (the "GBA"), wish to provide you with our comments on proposed amendments to 12 C.F.R. Parts 225 and 238 (the "Proposal") related to Control and Divestiture Proceedings, which Proposal was published in *The Federal Register* on May 14, 2019.

By way of background, the GBA has a membership consisting of the vast majority of commercial banks and thrifts, which we refer to as "banks" in this letter, in Georgia. We have communicated directly with our member banks to study the impact of the Proposal on the banks and their holding companies, which we refer to collectively as "financial institutions" or "institutions" in this letter, and wish to provide you with the comments and responses we have received from our members.

We applaud the effort of the Board of Governors of the Federal Reserve System (the "Federal Reserve") to provide clarity in this complex and often confusing area of law and regulation. Acceptance of large investments from various entities, particularly institutional and private equity investors, has taken on increased importance in the last decade as institutions carefully balance regulatory expectations for enhanced capital levels with the need to provide appropriate returns to shareholders. Compounding the difficulty of achieving this balance has been the increased burden and expense associated with registration of securities offerings with the Securities and Exchange Commission. This paradigm has resulted in many institutions choosing to raise capital through private offerings to a small number of institutional and private equity investors that often desire large ownership percentages to participate in capital offerings, particularly those of smaller institutions.

The complexity of the rules and often unwritten interpretations regarding the combination of factors that could be deemed to constitute "control" by an investor often forced institutions and their investors to undertake extensive planning of investments, in some cases only to find out that the Federal Reserve had revised its view of which combination of factors would lead to control or the requirement of an investor to submit a passivity and/or anti-association commitment had changed since the last time their advisors had interacted with the Federal Reserve on the topic. This outcome resulted in needless expense and delay, and sometimes market conditions changed as the matter was being considered, thereby leading to uncertainty in completing the proposed investment.

While we have not chosen to address specific questions presented in the Proposal, we wish to comment to encourage the Federal Reserve to issue final amendments to the existing rules for the sake of providing clarity to market participants. We believe the clarity issuing final amendments to the rules will enhance the speed with which capital offerings can be completed and will significantly decrease the likelihood that institutions and their investors will make good faith errors in designing capital offerings. Moreover, the Federal Reserve has the opportunity to clarify its

position around control questions that arise during the pendency of merger and acquisition transactions and in Shareholders' Agreements designed to protect the tax status of institution that have elected to be taxed under Subchapter S of the Internal Revenue Code. As a result, we encourage the Federal Reserve to move forward with finalizing and implementing the amendments discussed in the Proposal.

We note, however, that there is still work to be done in providing clarity to institutions and their investors regarding the control framework applicable to investments and shareholdings. Below, we provide example questions that we believe the Federal Reserve should address with the same clarity set forth in the Proposal. We note that many of these questions implicate the Federal Reserve's rules and interpretations under the Change in Bank Control Act of 1978, as amended.

- What are the circumstances under which a trust may be deemed a "company" under for purposes of determining if the Bank Holding Company Act of 1956, as amended, applies? For example, are there certain levels of non-bank investments that would cause a trust to be deemed a "company" even where the other criteria for the presumption in favor of the testamentary trust exemption under 12 C.F.R. §225.2(d)(3) are satisfied?

- When determining that "no other person will own, control, or hold the power to vote a greater percentage" of a class of voting securities, should institutions aggregate the person with his or her immediate family?

- When a group acting in concert or an individual and his or her immediate family files an Interagency Notice of Change in Bank Control, what is the ownership threshold at which an individual member of the group or family must file an Interagency Biographical and Financial Report and when may the financial information be omitted?

- Can more clarity be provided regarding the terms of securities that will cause them to be deemed a separate class of voting securities?

- What are the requirements regarding the use of voting trusts to transfer voting control of securities while the transferor retains an economic interest in those securities?

- What are the exact requirements for parties who had been in a control position to obtain clarity that they are no longer in control following dispositions or other changes in capitalization of the institution?

While we acknowledge the existing rules and guidance regarding these questions, we believe increasing the clarity of the Federal Reserve's position on these and other questions will benefit institutions and their shareholders. Moreover, we believe that these questions are more often faced by smaller community-oriented institutions that may have fewer resources to engage in extensive analysis of these questions.

In addition to the above-listed questions, there are many others that will be raised as the guidance under the Proposal is interpreted and applied by Federal Reserve staff, should the ideas in the proposal be incorporated into final rules. We suggest that the Federal Reserve consider a mechanism for making those interpretations public on an anonymized basis.

Ultimately, we believe the goal of the Federal Reserve should be to make every effort to enhance compliance with laws through providing clear and accessible guidance on these and other topics. We appreciate your consideration

of these comments and look forward to continued enhancements of the Federal Reserve's regulatory guidance to promote clarity and compliance in the banking industry.

Sincerely,

Joe Brannen
President and Chief Executive Officer

cc: Member institutions of the Georgia Bankers Association